

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission's Rules)
To Ensure Compatibility with)
Enhanced 911 Emergency)
Calling Systems)
)
Request for Waiver of)
Section 20.18(c) of the)
Commission's Rules)

CC Docket No. 94-102
RM-8143

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Wireless Telecommunications Bureau

D&E Wireless, Inc. ("D&EW"), on behalf of its broadband PCS licensee subsidiary¹ and pursuant to Section 1.3 of the Commission's rules, files this request for a waiver of Section 20.18(c) of the Commission's Rules, consistent with the Bureau's November 13, 1998 Order² in the above-captioned proceeding. D&EW anticipates that it will not be possible to enable use of TTY devices over D&EW's digital wireless systems by the implementation deadline of December 31, 1998. As described more fully below, D&EW intends to continue to work diligently to deploy/upgrade its systems to enable use of TTY devices, D&EW has established a timetable for

¹D&EW's wholly-owned subsidiary, PCS Licenses, Inc., currently holds the PCS Block E license for the York-Hanover, PA Basic Trading Area ("BTA"), call sign KNLG721, and the PCS Block D license for the Harrisburg, PA BTA, call sign KNLF911. Both licenses are subject to a pending application for Commission consent to the assignment of the licenses from PCS Licenses, Inc. to D&E/Omnipoint Wireless Joint Venture, L.P., file number 50532-CW-AL-98.

²Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, DA 98-2323 (Wir. Tel. Bur. Nov. 13, 1998) ("Order"), ¶¶ 10-12 (discussing procedures and guidance for carriers that seek a waiver of the TTY requirements of the Commission's wireless E911 obligations, 47 C.F.R. § 20.18(c)).

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such compliance, and has adopted reasonable steps to address consumer concerns. Therefore, D&EW respectfully submits that the waiver requested herein would address the special circumstances surrounding compliance with the wireless E911 TTY obligations and would serve the public interest.

Discussion

Section 1.3 of the Commission's rules provides for waiver of Commission rules "for good cause shown." 47 C.F.R. § 1.3. As the Commission and courts have often explained, rule waivers are properly granted when the facts and circumstances, pled with particularity, demonstrate that special circumstances warrant a deviation from the general rule and such a principled deviation would otherwise serve the public interest.³

In this case, D&EW anticipates that it will be unable to comply with Section 20.18(c) of the Commission's rules by the December 31, 1998 deadline because the technology which would make digital wireless systems compatible with TTY devices is simply unavailable at this time.⁴ Thus, special circumstances exist for a deviation from the rule until such time as D&EW is able to feasibly deploy/upgrade its systems to meet the E911 TTY requirements.

³In the Matter of Application for Review of BellSouth Wireless, Inc., Memorandum Opinion and Order, 12 FCC Rcd. 14031, 14038 (1997) (Request for waiver of Part 20 of the commission's rules is properly considered under Section 1.3 analysis, which follows traditional waiver standard articulated in Northeast Cellular and WAIT Radio); Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (waiver of FCC rules is proper where "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest"); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

⁴This industry-wide problem has been recognized by both wireless carriers and manufacturers. See generally Joint Comments of the Cellular Telecommunications Industry Association and Personal Communications Industry Association, filed in this docket on October 30, 1998.

In accordance with the November 13, 1998 Order, D&EW submits the following information in support of this waiver request, which further demonstrates D&EW's ongoing and good faith efforts at compliance.

1. *What steps the carrier is taking or intends to take to provide users of TTY devices with capability to operate such devices in conjunction with digital wireless phones.*

As a relatively small PCS carrier, D&EW does not have the resources to take a leading role in the development of technology which would ensure that speech- and hearing-impaired individuals have access to digital wireless communications. However, D&EW recognizes the critical importance of making such service available to the speech- and hearing-impaired for E911 calls. D&EW has contacted equipment vendors regarding the commercial availability of TTY-compatible devices for use with D&EW's network and will continue to make regular progress inquiries. Furthermore, D&EW will cooperate with industry groups, equipment manufacturers and the Commission in developing a technological solution. For example, D&EW has not been asked to provide equipment or services for field testing purposes but will entertain any such requests in order to facilitate deployment. In addition, D&EW will make reasonable efforts to notify and update subscribers about the ability to use TTYs to call 911 and will explore interim measures to accommodate TTY users such as the feasibility of advising the speech- and hearing-impaired that a digital communicator can provide access to TTY devices and the hearing community by using Telecommunications Relay Service ("TRS").

2. *When the carrier intends to make this capability available to TTY users. This information should include well-documented timetables and milestones from the carrier regarding implementation of this capability.*

D&EW has been informed by equipment vendors that the technology which would make digital wireless systems compatible with TTY devices may not be available for some indeterminate period of time. Accordingly, it is difficult to give a definitive estimate of when a technological solution may be available for commercial use. As a tentative estimate, D&EW relies upon the information which it has received from equipment vendors, who do not believe the relevant technology will be commercially available until at least the later part of 1999. In the meantime, D&EW intends to continue to work diligently to deploy/upgrade its systems to enable use of TTY devices as quickly as possible once the technology becomes available.⁵

3. What reasonable steps the carrier will take to address the consumer concerns referenced in the September 30 Order.

D&EW will ensure that any technology designed to make its digital network compatible with TTY devices satisfies the consumer criteria referenced in paragraph 9 and set forth in the Appendix to the Bureau's September 30 Order⁶ before selecting and implementing that technology. D&EW will engage in rigorous testing to determine that, for example, character error rates are at acceptable levels, TTY callers are able to visually monitor all aspects of call progress, and the other criteria are met. In addition, D&EW will fully consider any suggestions raised by its subscribers and potential subscribers regarding reliable and efficient placement of TTY E911 calls from its system.

⁵D&EW notes that the precise nature of such upgrades is uncertain for the very reason that the technology which would make the network compatible with TTY devices has not been determined.

⁶See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, DA 98-1982 (Wir. Tel. Bur. Sept. 30, 1998) ("September 30 Order").

Conclusion

D&EW will continue to deploy/upgrade its systems in a diligent manner to achieve compliance, and it will keep the Commission informed of its progress. However, because compliance by December 31, 1998 is not feasible, D&EW respectfully requests a waiver of the Section 20.18(c) obligations until such time as the necessary technology has been developed and made available for commercial use so that it can comply with those obligations.

Respectfully submitted,

D&E WIRELESS, INC.

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December 4, 1998

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DECLARATION OF ROBERT L. QUARANTA *

I, Robert L. Quaranta, do hereby declare under penalty of perjury that the following is true, complete and correct:

1. I am the Chief Executive Officer of D&E Wireless, Inc. ("D&EW").
2. I am responsible for the regulatory affairs of D&EW.
3. I have read and am familiar with the foregoing Request for Rule Waiver. The facts contained therein are true, complete and correct to the best of my knowledge, information and belief.


Robert L. Quaranta

Date: December 4, 1998

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* The original executed copy will be submitted upon receipt.